

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Dwight Patent 10945 Mining, LLC,

Case No. 2:19-cv-01357-JAD-NJK

Plaintiff

HML Investments, et al.,

Defendants

**Order Adopting Report and
Recommendation and Dismissing Claims
against Louis Monteleone, the United
States, and HML Investments**

[ECF No. 49]

Plaintiff Dwight Patent 10945 Mining, LLC brings this quiet-title action to settle disputed

10 rights in a parcel of property on which the City of North Las Vegas maintains a water tank. In

11 addition to the City, Dwight named as defendants Louis Monteleone, the United States of

12 America, and HML Investments. Because no proof of service was filed to demonstrate that these

13 additional defendants were served within the 90-day service window under Federal Rule of Civil

14 Procedure 4(m), the court ordered Dwight to show cause by March 4, 2020, why this action

¹⁵ should not be dismissed against those defendants.¹ Dwight did not respond to that order to show

16 cause, so the magistrate judge recommends that the claims against Monteleone, the United

¹⁷ States, and HTML be dismissed under FRCP 4(m) for lack of service.² The deadline to object to

18 that recommendation passed without objection or any request to extend the deadline to file one.

19 “[N]o review is required of a magistrate judge’s report and recommendation unless objections

20 are filed.”³

1 ECF No. 43.

2 ECF No. 49.

²³ ³ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

1 A court may dismiss an action based on a party's failure to prosecute her case or obey a
 2 court order.⁴ In determining whether to dismiss an action on one of these grounds, the court
 3 must consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
 4 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 5 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁵

6 The first two factors, the public's interest in expeditiously resolving this litigation and the
 7 court's interest in managing its docket, weigh in favor of dismissal of the claims against these
 8 unserved defendants. The third factor, risk of prejudice to defendants, also weighs in favor of
 9 dismissal because a presumption of injury arises from the occurrence of unreasonable delay in
 10 filing a pleading ordered by the court or prosecuting an action.⁶ A court's warning to a party that
 11 its failure to obey the court's order will result in dismissal satisfies the fifth factor's
 12 "consideration of alternatives" requirement,⁷ and that warning was given here.⁸ The fourth
 13 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
 14 the factors favoring dismissal.

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16⁴ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
 17 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
 18 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
 19 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

20⁵ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
 21 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

22⁶ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23⁷ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

⁸ ECF No. 49.

1 Accordingly, IT IS HEREBY ORDERED that the magistrate judge's report and
2 recommendation [**ECF No. 49**] is **ADOPTED** in full;

3 IT IS FURTHER ORDERED that **the claims against Louis Monteleone, HML**
4 **Investments, and the United States of America are DISMISSED** without prejudice under
5 FRCP 4(m).

6 Dated: April 15, 2020

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8 U.S. District Judge Jennifer A. Dorsey

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